



[4910-13-P]

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. FAA-2014-0622; Directorate Identifier 2014-NM-009-AD]**

**RIN 2120-AA64**

**Airworthiness Directives;** Empresa Brasileira de Aeronautica S.A. (EMBRAER)

Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model

EMB -135ER, -135KE, -135KL, -135LR, -145, -145ER, -145MR, -145LR, -145XR, -145 MP, and -145EP airplanes. This proposed AD was prompted by our determination of the need to revise the airplane airworthiness limitations to the pylon and fuselage. This proposed AD would require revising the maintenance or inspection program. We are proposing this AD to prevent fatigue cracking of various structural elements, which could affect the structural integrity of the airplane.

**DATES:** We must receive comments on this proposed AD by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may send comments by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (202) 493-2251.

- Mail: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- Hand Delivery: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170 - Putim - 12227-901 São Jose dos Campos - SP – BRASIL; telephone +55 12 3927-5852 or +55 12 3309-0732; fax +55 12 3927-7546; email [distrib@embraer.com.br](mailto:distrib@embraer.com.br); Internet <http://www.flyembraer.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0622; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations

office (telephone (800) 647-5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1175; fax 425-227-1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the ADDRESSES section. Include “Docket No. FAA-2014-0622; Directorate Identifier 2014-NM-009-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2014-01-01, dated January 20,

2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all EMBRAER Model EMB -135ER, -135KE, -135KL, -135LR, -145, -145ER, -145MR, -145LR, -145XR, -145 MP, and -145EP airplanes. The MCAI states:

This [Brazilian] AD was prompted by a new revision to the airworthiness limitations requirements [related to the pylon yokes I and II, and the skin panel of the windshield pillar] of the Maintenance Review Board Report. We are issuing this [Brazilian] AD to ensure that fatigue cracking of various structural elements is detected and corrected.

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2014-0622.

#### **Relevant Service Information**

EMBRAER has issued EMB145 Temporary Revision 15-3, dated August 26, 2013, to the Airworthiness Limitation Requirements (ALIs) of the EMBRAER EMB145 Maintenance Review Board Report MRB-145/1150; and EMB145 Temporary Revision 15-4, dated August 26, 2013, to the Airworthiness Limitation Requirements (ALIs), of the EMBRAER EMB145 Maintenance Review Board Report MRB-145/1150. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

#### **FAA’s Determination and Requirements of this Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because

we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD would require revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, an operator might not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC) in accordance with the provisions of paragraph (i) of this proposed AD. The request should include a description of changes to the proposed inspections that will ensure the continued operational safety of the airplane.

#### **“Contacting the Manufacturer” Paragraph in this Proposed AD**

Since late 2006, we have included a standard paragraph titled “Airworthy Product” in all MCAI ADs in which the FAA develops an AD based on a foreign authority’s AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In an NPRM having Directorate Identifier 2012-NM-101-AD (78 FR 78285, December 26, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to the FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase “its delegated agent” to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

One commenter to the NPRM having Directorate Identifier 2012-NM-101-AD (78 FR 78285, December 26, 2013) stated the following: “The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.”

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the

identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it “Contacting the Manufacturer.” This paragraph now clarifies that for any requirement in this proposed AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, ANAC, or ANAC’s authorized Designee.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the ANAC Designee, the approval must include the Designee’s authorized signature. The Designee signature indicates that the data and information contained in the document are ANAC-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the ANAC Designee’s authorized signature approval are not ANAC-approved, unless ANAC directly approves the manufacturer’s message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers’ service instructions that are “Required for Compliance” with ADs. We

continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

### **Costs of Compliance**

We estimate that this proposed AD affects 688 airplanes of U.S. registry.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be \$58,480, or \$85 per product.

### **Authority for this Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.



## **Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## **List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## **The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

### **PART 39 - AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

#### **§ 39.13 [Amended]**

2. Amend § 39.13 by adding the following new airworthiness directive (AD):

**Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Docket No. FAA-2014-0622;  
Directorate Identifier 2014-NM-009-AD.

**(a) Comments Due Date**

We must receive comments by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB -135ER, -135KE, -135KL, -135LR, -145, -145ER, -145MR, -145LR, -145XR, -145 MP, and -145EP airplanes, certificated in any category, all serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 54, Nacelles/pylons; 53, Fuselage.

**(e) Reason**

This AD was prompted by our determination of the need to revise the airplane airworthiness limitations to the pylons and fuselage. We are issuing this AD to prevent fatigue cracking of various structural elements, which could affect the structural integrity of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Revision of Maintenance or Inspection Program**

Within 60 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, by incorporating EMBRAER EMB145 Temporary Revision (TR) 15-3, dated August 26, 2013, to the Airworthiness Limitation Requirements (ALIs) of the EMBRAER EMB145 Maintenance Review Board Report MRB 145/1150; and EMBRAER EMB145 TR 15-4, dated August 26, 2013, to the Airworthiness Limitation Requirements (ALIs) of the EMBRAER Maintenance Review Board Report MRB-145/1150; as applicable.

(1) The compliance times depend on the airplane model, and the pre-modification and post-modification conditions specified in EMBRAER EMB145 TR 15-3, dated August 26, 2013, to the Airworthiness Limitation Requirements (ALIs) of the EMBRAER EMB145 Maintenance Review Board Report MRB 145/1150; and EMBRAER EMB145 TR 15-4, dated August 26, 2013, to the Airworthiness Limitation Requirements (ALIs) of the EMBRAER Maintenance Review Board Report MRB-145/1150; as applicable.

(2) The initial compliance times for the tasks specified in EMBRAER EMB145 TR 15-3, dated August 26, 2013, to the Airworthiness Limitation Requirements (ALIs) of the EMBRAER EMB145 Maintenance Review Board Report MRB 145/1150; and EMBRAER EMB145 TR 15-4, dated August 26, 2013, to the Airworthiness Limitation Requirements (ALIs) of the EMBRAER Maintenance Review Board Report MRB-145/1150; as applicable; are at the applicable threshold compliance times specified

in EMBRAER EMB145 TR 15-3, dated August 26, 2013; and EMBRAER EMB145 TR 15-4, dated August 26, 2013; or within 600 flight cycles after the effective date of this AD, whichever occurs later. For purposes of this AD, the initial compliance times (identified as “Threshold” or “T” in the service information) are expressed in “total flight cycles.”

**(h) No Alternative Actions and Intervals**

After accomplishment of the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

**(1) Alternative Methods of Compliance (AMOCs):** The Manager, International Branch, ANM-116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1175; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

**(2) Contacting the Manufacturer:** For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or Agência Nacional de Aviação Civil (ANAC); or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

**(j) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian Airworthiness Directive 2014-01-01, dated January 20, 2014, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2014-0622.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170 - Putim - 12227-901 São Jose dos Campos - SP – BRASIL; telephone +55 12 3927-5852 or +55 12 3309-0732; fax +55 12 3927-7546; email

distrib@embraer.com.br; Internet <http://www.flyembraer.com>. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on August 25, 2014.

Michael Kaszycki,  
Acting Manager,  
Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. 2014-21059 Filed 09/03/2014 at 8:45 am; Publication Date: 09/04/2014]